

APPEAL NO. 031393
FILED JULY10, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 17, 2003. The hearing officer determined that the appellant (claimant) had not sustained a compensable occupational disease injury; that the date of injury (DOI) was _____; that the claimant had not timely reported her alleged injury to the employer; and that because there was no compensable injury the claimant did not have disability.

The claimant appealed the adverse determinations, emphasizing favorable evidence and asserting that on the DOI found by the hearing officer, the claimant was on medical leave (for an unrelated illness) and was not even at work. The respondent (carrier) responds with a "Motion to Strike," alleging that the claimant's appeal is untimely and otherwise urging affirmance.

DECISION

Affirmed.

First, addressing the carrier's contention that the claimant's appeal is untimely, the carrier correctly notes that the deemed receipt date is May 7, 2003, that 15 days, excluding Saturdays, Sundays and holidays listed in Section 662.003 of the Texas Government Code after the deemed receipt date is May 29, 2003, and that the claimant's request for review is dated May 28, 2003. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c) (Rule 143.3(c)) provides that a request for appeal shall be presumed to be timely filed if it is: (1) mailed on or before the 15th day after the date of receipt of the hearing officer's decision; and (2) received by the Texas Workers' Compensation Commission (Commission) not later than the 20th day after the date of receipt of the hearing officer's decision. Both portions of Rule 143.3(c) must be complied with in order for an appeal to be timely. Texas Workers' Compensation Commission Appeal No. 94065, decided March 1, 1994; Texas Workers' Compensation Commission Appeal No. 94111, decided March 10, 1994. The claimant's appeal is both dated and postmarked May 28, 2003, and was received by the Commission's clerk of proceedings on June 2, 2003. The claimant's appeal is timely.

The claimant, a customer service representative, testified how making telephone calls and inputting data in a computer caused a left upper extremity repetitive trauma injury. See Sections 401.011(34) and (36) for definitions of occupational disease and repetitive trauma. The claimant's case is complicated by the fact that she had an injury to her right upper extremity in 1998 and during the time frames involved in this injury she was receiving treatment, was hospitalized, and had surgery for a nonwork-related condition. There was substantial conflicting evidence on all the issues.

Perhaps the key issue was the DOI. The DOI for an occupational disease repetitive trauma injury "is the date on which the employee knew or should have known that the disease may be related to the employment." Section 408.007. Although the claimant's testimony was inconsistent and contradicting, the claimant testified that her left arm problems began in mid-December 2001, and that she "immediately" attributed those problems to her work activities. That testimony is supported by the treating doctor's progress note dated January 31, 2002, giving a history of left "arm pain X 6 weeks." The fact that the claimant was not at work on _____, the DOI found by the hearing officer, does not preclude a finding of a DOI pursuant to Section 408.007.

Similarly, there was conflicting evidence on the other issues. The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **TRAVELERS INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Gary L. Kilgore
Appeals Judge